

# The Former Spouses' Protection Act

**T**HE Uniformed Services Former Spouses' Protection Act is one of the most misunderstood areas concerning military rights incident to a failed marriage. Congress created this federal law in 1982 to provide relief for qualifying former spouses of both active duty and reserve-component members. It preserves benefits that normally terminate after a divorce – to include exchange, commissary, medical care, theater, distribution of retirement pay, child support and coverage under the Survivor Benefit Program.

## Rights prior to divorce

Before addressing the FSPA, it is noted that all military benefits for a non-military spouse continue as long as the parties are married, even if they are separated. Should the non-military person's ID card expire, the Soldier cannot deny renewal. The family member may simply request a new card under the provisions of Section 2M, AR 600-8-14.

After divorce, the children of the military member continue with all of their benefits without regard to the FSPA. Normally, as long as the soldier has ID benefits, the un-emancipated children retain all benefits until age 21 or, if full-time college students, until age 23.

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## Divorce & FSPA

It's critical that the parties understand the FSPA prior to entering into a separation-property-settlement agreement and divorce, because some rights must be addressed in the divorce and, if not, will be lost forever. FSPA rights are federal law and cannot be expanded by state courts.

The FSPA benefits are based on a scale of the couple's years of marriage that overlapped the Soldier's active-duty years of creditable service. For reserve-

component Soldiers, the time of service is computed based on the accumulation of sufficient points to constitute a “good year” of service. To simplify the statute, the benefits are presented in escalation of years of service that overlapped active-duty years, falling into categories “10/10,” “20/20/15,” and “20/20/20.”

## 10/10

This indicates a marriage of at least ten years that overlapped 10 years of active-duty service. The FSPA provides no benefits for divorces obtained prior to satisfying the 10/10 years period. For divorces after the 10/10 period is achieved, the non-military spouse may obtain a state-court decree that distributes a portion of the Soldier’s military-retirement pay, and file the decree with the Defense Finance and Accounting Center in Cleveland, Ohio, to obtain involuntary direct payments on a monthly basis.

## 20/20/15

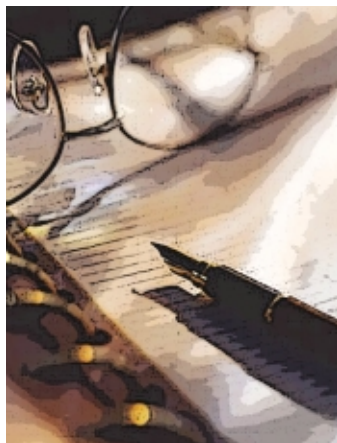
This indicates a marriage of at least 20 years coupled with 20 years of creditable service with at least 15 years of overlap between the marriage and years of service. In addition to the noted 10/10 benefit, the statute provides medical benefits for un-remarried former spouses, based on the date of divorce.

## 20/20/20

This indicates a marriage of at least 20 years with 20 years of creditable service that overlapped each other for at least 20 years. Marriage during retirement does not count. Former spouses who complete 20/20/20 prior to divorce retain all of their military benefits. Remarriage will terminate benefits, but if the new marriage ends in divorce or death, some military benefits may be reinstated.

## Special Note

There is no statutory right to 50 percent of a Soldier’s retirement pay. The FSPA contains a 50-percent figure as the maximum it permits as involuntary collection from the disposable retirement pay. “Disposable



retirement pay” is the dollar amount remaining after subtracting SBP payments, debts to the government and offsets for disability pay. Recovery of a portion of the Soldier’s retirement pay as a property distribution will not exceed 50 percent of the stated remainder. The FSPA never awarded nor has it established a formula to award retirement pay. It simply agreed to honor state court orders and only up to the FSPA limit.

## What is SBP?

The survivor benefit plan is a form of annuity that allows both active and reserve members to provide continued income to beneficiaries after the retiree’s death, when retirement pay is discontinued. If the Soldier is married at the time of separation processing, the maximum amount of SBP must be taken unless the spouse waives all or agrees to a lesser amount in writing. If the Soldier is divorced at the time of retirement processing, he or she is not required to obtain SBP. But a service member may request the coverage for a former spouse or may be ordered to obtain it in a separation agreement or by court decree.

Once a Soldier is retired, he or she may not initiate the SBP nor can a court order its creation. SBP is available for only one spouse; it cannot be split between present and past spouses.

There are many aspects to the FSPA, separation and divorce that a qualified attorney can properly address during an appointment consultation. Do not rely on rumors and gossip. Make an appointment to see your Legal Assistance attorney.